IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOM APPEAL NO.61 OF 2007

Naresh A. Shah ..Appellant

Versus

Commissioner of Customs & Anr..Respondents

Mr. H.R. Shetty, for the Appellant
Mr. P.S. Jetly with Mrs. Hema P.Shah, for the Respondents.

CORAM : F.I. REBELLO &
R.S. MOHITE, JJ.
DATED : 29TH NOVEMBER, 2007

P.C.

. The Appellant though a broker, the learned Appellate Tribunal considering the facts on record held that the Appellant was a conspirator and considering the provisions of sub-section (a) or (b) of Section 112 was liable for penalty and accordingly upheld the order of penalty which was imposed. The Appellant being aggrieved preferred rectification application before the Tribunal which came to be disposed of by order dated 15th April, 2005. The learned Bench of the Tribunal held that the Application is clearly beyond the scope of an R.O.M.

2. The Appellant being aggrieved by the order of the Tribunal and the order passed in rectification preferred an Appeal before this Court being Customs Appeal No.39 of 2005. That Appeal was withdrawn. The Appellant made a statement that he would prefer a Review. The learned Bench whilst disposing off the matter observed, that if the Appellant moves application it will be for the Tribunal to consider it in accordance with law. The Appeal along with the order for rectification application was disposed of by order dated

15th December, 2005.

3. The Appellant thereafter preferred one more rectification application. It is the submission of the Counsel that the expression "review"in the order of this Court dated 1q5th December, 2005 was a typing error as no review is maintainable under the Act and what is maintainable is rectification application. That application was heard and the learned Tribunal by its order dated 22nd December, 2006 held that the same points which were raised in the first rectification application were also raised in the second application and consequently dismissed the same.

4. The Appellant has come in Appeal against the main order as well as the order passed in rectification application.

5. In so far as the first order passed in Appeal as also the order passed in rectification application no appeal would lie to this Court in respect of those orders considering that the Appellant had earlier withdrawn the Appeal challenging the original order in Appeal as also the first order of rectification.

. In so far as the second order of rectification is concerned we leave that question open as to whether an Appeal would be maintainable against that order, to this Court.

6. We have, however,considered the matter on merits. We

find from the order of the Tribunal that they have concurred with the finding of fact of the authorities below that the appellant was a conspirator and consequently was liable for penalty under Section 112(a) or (b) of the Customs Act. In our opinion this is purely a finding of fact. There is nothing brought to our attention warranting this Court coming to the conclusion other than what the learned Tribunal had arrived at. In the light of that there is no merit in this Appeal which is accordingly dismissed.

(R.S.MOHITE, J.) **(F.I. REBELLO, J)**